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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CALIFORNIA ENERGY INVESTMENT FUND 1, LP et al., Plaintiffs and Respondents, v. HU & ASSOCIATES, PC et al., Defendants and Appellants.	B281142 (Los Angeles County Super. Ct. No. EC065346)

APPEAL from an order of the Superior Court of Los Angeles County, William D. Stewart, Judge. Affirmed.

Law Office of John V. Gaule and John V. Gaule for Defendants and Appellants.

Masson & Fatini, Richard E. Masson and Susan M. Masson for Plaintiffs and Respondents.

Defendants Hu & Associates and John D. Hu (collectively Hu) appeal from an order denying their anti-SLAPP motion.[1] We affirm.

BACKGROUND

I. The Complaint

Plaintiffs California Energy Investment Fund 1, LP, Western Regional Center, Inc., and WRC Investment Fund 1, LLC (collectively Investment Fund) filed this action against Hu, alleging six causes of action for libel and libel per se, and causes of action for defamation, intentional interference with prospective economic advantage, and intentional interference with contractual relationship.

Investment Fund alleged that it was involved in the marketing of the Genesis Solar Project in China and other countries through the EB-5 Immigrant Investor Pilot Program (EB-5 Program). This program allows foreign investors to obtain lawful permanent resident status in the United States if they make qualifying investments.[2] Over 80 percent of the investments through the EB-5 Program come from China.

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[1] A special motion to strike (Code Civ. Proc., § 425.16; all further statutory references are to the Code of Civil Procedure) is also known as an anti-SLAPP (Strategic Lawsuit Against Public Participation) motion. A SLAPP is intended to chill the exercise of the right of free speech or the right to petition the government for redress of grievances. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055.)

[2] "Ordinarily, the alien must invest $1,000,000; however, if the investment is made in a 'targeted employment area' with an

Licensed immigration agencies and attorneys recruit potential investors in projects participating in the EB-5 Program through mass marketing and the media. The primary considerations for potential investors looking to invest in EB-5 projects are the ability to recoup an investment, confirmation of I-526 approvals for the project, and the strength of the project owners. There is strong competition for investors. Sometimes agencies and/or attorneys sabotage others' EB-5 projects by spreading rumors about some projects in order to obtain investors for the projects they represent.

In 2013, the Genesis Solar Project was approved as a qualifying EB-5 project by the United States Citizen and Immigration Services (USCIS). It received its first I-526 petition approval from the USCIS in August 2013 and had received 15 I-526 petition approvals by November 2103.

Hu is a licensed attorney who identifies himself as an expert in the field of investment immigration attorneys. He authored a Chinese-language article entitled "American Attorney John Hu Talks about EB-5 Investment Immigration (No. 147)," "Legal Analysis of Genesis Project (California Solar Project) (1),"

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unemployment rate of 1.5 times the national average, only $500,000 need be invested. [Citations.] [¶] In applying for an EB-5 visa, an alien entrepreneur must submit an I-526 petition and supporting documentation demonstrating that the required capital has been committed; that the investment is made from the alien's own lawfully acquired funds; and, if applicable, that the investment is being made in a targeted employment area with a high unemployment rate." (*Spencer Enterprises, Inc. v. U.S.* (9th Cir. 2003) 345 F.3d 683, 686.)

"The Legal Consequences of Forging I-526 Approval Notice."[3] In the article, he stated that he "concluded that as a lawyer," he should expose the Genesis Solar Project in order to prevent potential investors from being deceived.

Hu explained: "My main focus of practice in America has always been immigration law, except a small number of business litigations that interest me. For more than ten years, I can say that I have handled countless of cases and I am very familiar with the content of each approval notice issued by USCIS. Therefore, if there is a forgery, I can tell by just a glance. However, the alleged I-526 approval notice of the Genesis Project (California solar project) that was provided to investors shows a trail of forgery. As for what area reflects the trail of forgery, I would only limit the scope of listeners to the clients who have signed retainer agreement[s] with me and hired me as their representing attorney."

Hu questioned the truthfulness of the attorney marketing the Genesis Solar Project. He also stated that forging the I-526 approval notices constituted fraud, and "[b]ased on this alone, the investors of the project are entitled to ask the project company to return their investment money, project fee and attorney fee." He ended the article with a review of his credentials and a statement that his "sole intention" was "to evaluate the legal consequences of the project in accordance with American immigration law, and [he had] no intention and/or action of 'finding or soliciting' 'investors' from the perspective of U.S. federal or state's security exchange regulations." He requested that his readers contact

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[3] An English translation of the article was included as an exhibit to the complaint.

him "if you, your friends or relatives need investment immigration services."

Hu's article was published on the Internet on two web sites: yiminjiayuan.com and chineseinla.com. The publisher was identified only as "CAI0920."

Investment Fund alleged that Hu's statements regarding the Genesis Solar Project were false and defamatory, "apparently intended to injure the Genesis [Solar] Project as well as the [Investment Fund] in their trade, office and profession." Investment Fund sent Hu a cease and desist letter on November 5, 2013, demanding that Hu cease further publication of the article and issue a retraction. Hu responded on November 7 stating that he was not responsible for republication of the article on the Internet and Investment Fund had no claim. Hu's November 7 letter was published on yiminjiayuan.com.

On November 9, Hu published an open letter to investors in the Genesis Solar Project, telling them: "For your own interests, please request the project parties to sue John D. Hu, Esq. in court because this is the only way to provide more resources for John D. Hu, Esq. to disclose the project using fake I-526 approvals." He stated that the purpose of the letter was to disclose the forgeries, not to get investors to breach their contracts or to invest with him rather than investing in the Genesis Solar Project. He added that he "calls upon all Chinese investors to band together and not to be deceived by American lawyers who violate their professional [ethics] and practicing norms and receive lots of commission from the project parties and by agents who repeatedly defraud Chinese investors any more."

Thereafter, Investment Fund was contacted by its agents, who indicated that investors were withdrawing their

participation in the Genesis Solar Project due to Hu's accusations of forgery. In addition, about 40 potential investors decided not to invest in the project.

Investment Fund asserted that the I-526 approvals were not forgeries or obtained by means of forgery. Their validity was confirmed by Investment Fund and its attorneys.

II. Hu's Demurrer and Anti-SLAPP Motion

Hu filed a demurrer and an anti-SLAPP motion.[4] In his anti-SLAPP motion, he asserted that all of Investment Fund's causes of action based on defamation were subject to an anti-SLAPP motion because they arose from acts in furtherance of his constitutionally protected speech, namely writings connected to a public issue or an issue of public interest. (§ 425.16, subd. (e)(3) & (4).) He claimed Investment Fund had no probability of prevailing, because the writings were privileged; they were made between interested persons and without malice. (§ 47, subd. (c).)

In support of the motion, Hu submitted copies of his attorney-client fee agreements with EB-5 investor clients and email inquiries he received from current and potential clients. He submitted copies of documents supporting the statements he made in the article, including those relating to investigations into

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[4] Hu apparently filed two anti-SLAPP motions. Only the second is included in the clerk's transcript. According to Investment Fund, that was the one the trial court denied. We granted Investment Fund's request to augment the record with its opposition to the second anti-SLAPP motion, its request for judicial notice, and Hu's reply. There is nothing in the record to indicate what happened with respect to Hu's first anti-SLAPP motion.

one of Investment Fund's partners by the Financial Industry Regulatory Authority and Investment Fund's attorney by the Securities and Exchange Commission. He submitted copies of Investment Fund's cease and desist letter, his response, and the open letter to investors in the Genesis Solar Project, all of which were published on the Internet on yiminjiayuan.com. Hu also submitted a copy of a retraction letter he published on yiminjiayuan.com on November 4, 2013. This letter stated that the Genesis Solar Project did not forge the I-526 approvals, but the USCIS made mistakes in its processing of the approval letters.

In opposition, Investment Fund pointed out that it had previously filed this action in federal court based on diversity jurisdiction. Hu filed an anti-SLAPP motion in that court, and the court denied the motion. Eventually, the federal district court dismissed the action based on lack of diversity. Investment Fund claimed, based on the denial of the anti-SLAPP motion in the federal court, that Hu was collaterally estopped from bringing the current motion. Investment Fund also claimed that its complaint was not subject to the anti-SLAPP statute, because Hu's statements fell within the statutory exception to the statute contained in section 425.17, subdivision (c). This applies to statements made to influence customers or potential customers in

certain business contexts.[5] Investment Fund added that, in any event, they were likely to prevail on the merits of their claims.[6]

In support of its opposition, Investment Fund submitted excerpts from Hu's deposition regarding the article. In the

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[5] Section 425.17, subdivision (c), provides that "[s]ection 425.16 does not apply to any cause of action brought against a person primarily engaged in the business of selling or leasing goods or services, including, but not limited to, insurance, securities, or financial instruments, arising from any statement or conduct by that person if both of the following conditions exist: [¶] (1) The statement or conduct consists of representations of fact about that person's or a business competitor's business operations, goods, or services, that is made for the purpose of obtaining approval for, promoting, or securing sales or leases of, or commercial transactions in, the person's goods or services, or the statement or conduct was made in the course of delivering the person's goods or services. [¶] (2) The intended audience is an actual or potential buyer or customer, or a person likely to repeat the statement to, or otherwise influence, an actual or potential buyer or customer, . . . and is the subject of a lawsuit brought by a competitor, notwithstanding that the conduct or statement concerns an important public issue.

[6] In determining whether an anti-SLAPP motion should be granted, the court engages in a two-prong analysis. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76; *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) First, it determines whether defendants have "made a threshold showing that the challenged cause of action is one 'arising from' protected activity." (*City of Cotati*, *supra*, at p. 76; *Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1250.) If so, then it must determine whether plaintiffs have shown a probability of prevailing on the merits of the claim. (*Barry v. State Bar of California* (2017) 2 Cal.5th 318, 324; *City of Cotati*, *supra*, at p. 76.)

request for judicial notice, Investment Fund included documents from the federal action, including the complaint, anti-SLAPP motion, the opposition, and the ruling on the motion. The federal court denied the motion on the ground the action fell within the section 425.17, subdivision (c), exemption to the anti-SLAPP statute. The court found: "Hu's practice apparently focuses on recruiting foreign investors for EB-5 projects." In his article, Hu made statements about Investment Fund, which competed with him for investors in EB-5 projects. It was "a fair inference from the article . . . that these statements were made for the purpose of promoting Mr. Hu's services and retaining new investors/clients." While he referred to a "trail of forgery," he would provide details only to those who signed a retainer agreement with him and hired him as their attorney.

In reply, Hu argued that collateral estoppel did not apply because there was no final judgment on the merits in the federal court, and the issues being litigated were not the same. He also argued that the section 425.17, subdivision (c), exemption did not apply.

III. The Trial Court's Ruling

The trial court found Hu met his initial burden of demonstrating that Investment Fund's causes of action were based on protected conduct within the scope of section 425.16, subdivision (e). The causes of action were based on Hu's article, which was a written statement made in a public forum concerning an issue of public interest.

The court then turned to the question whether Investment Fund met its burden. The court briefly addressed the collateral estoppel issue, finding that collateral estoppel did not apply

because there was no final decision on the merits in the federal action.

The court then turned to the question whether the commercial speech exception (§ 425.17, subd. (c)) to the anti-SLAPP statute applied. The court noted that in the article, Hu indicated that he would advise investors not to invest in Investment Fund's project, which was fraudulent and based on forged documents, which he would reveal after obtaining a signed retainer agreement.

The court found: "The revelatory phrase here is the recitation that 'more and more investors consulted me' and 'some investors signed agreement [*sic*] with me asking to represent them on this project[.'] Mr. Hu has, by this turn of phrase, admitted that he seeks clients not simply as an attorney performing [the] usual attorney functions of legal representation and legal advice, but as an investment advisor or counselor in the area of EB-5 which permits a limited number of potential immigrants who have $500,000.00 to invest in government-approved projects which are expected to create jobs. It is perfectly obvious that persons consulting an attorney on the EB-5 program have a minimum of $500,000.00 to invest and the attorney qua investment advisor can direct them to or away from any given project. There would be no point at all [in] having a client who, after signing a retainer agreement, is shown the 'trail of forgery' and then walks out the door to the attorney's office and seeks investment advice elsewhere! Why would anyone pay money, sign a retainer agreement, get the evidence of the 'trail of forgery' which Mr. Hu has advertised extensively in his 'article' and then not use his investment service? It makes no sense at all."

The court found, for purposes of the anti-SLAPP motion, "that Mr. Hu is involved in the business of getting investors who at the same time are clients of his law firm." This was "an inference that is inescapable." Thus, Hu was a competitor of Investment Fund within the meaning of section 425.17, subdivision (c), and the anti-SLAPP procedures did not apply.[7] The trial court thus denied the motion.

Hu timely appealed.

DISCUSSION

We begin our discussion with the "fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment. [Citations.] 'This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' [Citations.]" (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608-609.)

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[7] "If a plaintiff's lawsuit comes within section 425.17, subdivision ([c]), it is exempt from the anti-SLAPP statute, and thus, a trial court may deny the defendants' special motion to strike without determining whether the plaintiff's causes of action arise from protected activity, and if so, whether the plaintiff has established a probability of prevailing on those causes of action under section 425.16, subdivision (b)(1)." (*Tourgeman v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447, 1460.) The trial court therefore did not need to reach the question whether Investment Fund demonstrated a probability of prevailing on the merits.

"'To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.]' [Citation.] 'Mere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review.' [Citation.] 'Hence, conclusory claims of error will fail.' [Citation.]" (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1457; accord, *Phillips v. Campbell* (2016) 2 Cal.App.5th 844, 853; see also Cal. Rules of Court, rule 8.204(a)(1).)

As Investment Fund points out, Hu has failed to meet this burden on appeal. The "legal argument" in his opening brief is devoid of authority and meaningful legal analysis as to all points except the single paragraph in which he defines an anti-SLAPP motion. He includes many "facts" unsupported by any citation to the record. Those citations to the record that he does include are, as often as not, to arguments he made in the documents he filed in the trial court, not to the evidence submitted on the anti-SLAPP motion.

Hu's "legal argument" basically consists of conclusory statements: His "[a]rticle clearly falls within the [a]nti-SLAPP statute because it reflected his opinion of the Genesis [Solar] Project at the time of his writing," it addresses a matter of public interest, and it does not fall within the exception to the anti-SLAPP statute, citing only his arguments on those subjects below.

In response to Investment Fund's claims regarding his opening brief, Hu states in his reply brief that "this [c]ourt is well versed in California's [a]nti-SLAPP statute and, therefore, Hu did not in the Appellant's Opening Brief and does not now in reply

wish to waste this [c]ourt's time citing authority unnecessarily. Further, it is not a requirement for appellate briefs to insert citations after every fact."

Hu is wrong. It is absolutely necessary to cite authority in support of every point he wishes to make. (*Jameson v. Desta*, *supra*, 5 Cal.5th at pp. 608-609; *Phillips v. Campbell*, *supra*, 2 Cal.App.5th at p. 853.) "'This is . . . an ingredient of the constitutional doctrine of reversible error.'" (*Jameson*, *supra*, at p. 609.) "'The absence of cogent legal argument or citation to authority allows this court to treat the [appellant's arguments] as [forfeited].' [Citations.]" (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956; accord, *Orange County Water Dist. v. Alcoa Global Fasteners, Inc.* (2017) 12 Cal.App.5th 252, 360.)

Additionally, "[a]ny reference in an appellate brief to matter in the record must be supported by a citation to the volume and page number of the record where that matter may be found. [Citation.] This rule applies to matter referenced at any point in the brief, not just in the statement of facts. [Citation.]" (*Sky River LLC v. County of Kern* (2013) 214 Cal.App.4th 720, 741; accord, *Professional Collection Consultants v. Lauron* (2017) 8 Cal.App.5th 958, 970; see also Cal. Rules of Court, rule 8.204(a)(1)(C).) We may disregard statements of fact unsupported by citation to the record. (*Professional Collection Consultants*, *supra*, at p. 970; *In re Marriage of E.U. & J.E.* (2012) 212 Cal.App.4th 1377, 1379, fn. 2.)

Despite Hu's failure to meet his burden on appeal of demonstrating error, our independent review of the record (*Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 26;

Tourgeman v. Nelson & Kennard, *supra*, 222 Cal.App.4th at p. 1458) confirms that the trial court's ruling was correct.

Section 425.17, subdivision (c), "exempt[s] from the anti-SLAPP law a cause of action arising from commercial speech when (1) the cause of action is against a person primarily engaged in the business of selling or leasing goods or services; (2) the cause of action arises from a statement or conduct by that person consisting of representations of fact about that person's or a business competitor's business operations, goods, or services; (3) the statement or conduct was made either for the purpose of obtaining approval for, promoting, or securing sales or leases of, or commercial transactions in, the person's goods or services or in the course of delivering the person's goods or services; and (4) the intended audience for the statement or conduct meets the definition set forth in section 425.17[, subdivision] (c)(2)." (*Simpson Strong-Tie Co., Inc. v. Gore*, *supra*, 49 Cal.4th at p. 30.) Subdivision (c)(2) of section 425.17 defines "[t]he intended audience [a]s an actual or potential buyer or customer, or a person likely to repeat the statement to, or otherwise influence, an actual or potential buyer or customer . . . ."

Hu is primarily in the business of selling his services, and his statements were directed at potential customers. His statements were made for the purpose of selling his services to these potential customers. This is the only reasonable inference to be drawn from his statement that "the alleged I-526 approval notice of the Genesis Project (California solar project) that was provided to investors shows a trail of forgery. As for what area reflects the trail of forgery, I would only limit the scope of listeners to the clients who have signed retainer agreement[s] with me and hired me as their representing attorney."

Hu began his article by talking about "the company in charge of Chicago Convention Center project [that] contacted me and asked me to market their project." He explained that he did not do so based on his calculations, and he "advis[ed his] clients absolutely not to invest in this . . . project." With respect to the Genesis Solar Project, he said that he "started receiving investor's inquiries seeking [his] opinion on" the project. "[A]s more and more investors consulted [him] about this project, and some investors signed agreement [*sic*] with [him] asking [him] to represent them on this project," he researched the project.

We agree with the trial court that these statements show that Hu "admitted that he seeks clients not simply as an attorney performing [the] usual attorney functions of legal representation and legal advice, but as an investment advisor or counselor in the area of EB-5 which permits a limited number of potential immigrants who have $500,000.00 to invest in government-approved projects . . . ." Hu therefore "is involved in the business of getting investors who at the same time are clients of his law firm" seeking immigration assistance.[8]

Other statements in various documents support this conclusion. In his subsequent open letter to investors in the Genesis Solar Project, he stated that his purpose in writing the

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[8] Hu did include a disclaimer that his "sole intention" was "to evaluate the legal consequences of the project in accordance with American immigration law, and [he had] no intention and/or action of 'finding or soliciting' 'investors' from the perspective of U.S. federal or state's security exchange regulations." However, he followed that disclaimer with a request that his readers contact him "if you, your friends or relatives need investment immigration services."

article was "to inform the investors of the fact that there are fake I-526 approvals in this project rather than to make the investors who have already signed a contract of this project breach their contract or to make investors who are ready to sign a contract of this project not sign with this project but to sign with John D. Hu, Esq. or sign a contract of a project John D. Hu, Esq. recommends." It is a reasonable inference from these statements that Hu makes recommendations as to projects potential investors should invest in. This would make him a competitor of Investment Fund, which is seeking to have those same potential investors invest in its project.

Hu's attorney-client fee agreement states in pertinent part: "The Client is hiring the Attorney to represent Client in the petition for EB5 investor immigrant visa. The Attorney will provide those legal services reasonably required to represent the Client until there is any decision made by the USCIS for the I-829 application. **Attorney shall also provide free legal service for receiving investment money back from the [blacked out] Project according to the Subscription Agreement if Client successfully invests into [blacked out] Project, however, Attorney shall not be able to promise of providing free legal service for receiving investment money back from other projects that Client may invest.**" Again, it is a reasonable inference that Hu is in competition with other companies for investors in EB-5 projects.

In his "Agreement of EB5 Immigration Service," regarding the Americana One EB-5 project, Hu acknowledges he is "not a registered broker-dealer in the United States under SEC laws. What HU will do under this Agreement is to introduce, truthfully according to his analysis of this Project under Immigration Laws,

the Project to his immigration investor clients who want to immigrate to the United States by investment. The clients will make their own decision." In doing so, "HU shall only represent the interest of his investor clients . . . ." Hu states that he "is willing to advise his investor clients the immigration legal consequences of investing in this Project," but his "advice shall not be construed as soliciting investors under SEC laws and also HU shall not receive any compensation or commission . . . for introducing this Project to his investor clients."

It is clear that Hu agreed to introduce a specific EB-5 project, the Americana One Project, to his investor clients and give them investment advice, but he made every effort to avoid running afoul of securities laws. Nonetheless, these statements support an inference that Hu is in competition with Investment Fund for investors.

Sufficient evidence supports the trial court's finding that Hu and Investment Fund are competitors with respect to recruiting EB-5 investors for qualified projects. Thus, Investment Fund's causes of action arose from statements containing representations of fact about a business competitor's operations. The section 425.17, subdivision (c) exception therefore applies, and the trial court properly denied Hu's anti-SLAPP motion on that basis. (*Simpson Strong-Tie Co., Inc. v. Gore*, *supra*, 49 Cal.4th at p. 30.)

DISPOSITION

The order is affirmed.
NOT TO BE PUBLISHED

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CURREY, J.*

* Associate Justice of the Court of Appeal, Second Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.